



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: The Lisle Company

File: B-278205

Date: January 6, 1998

Christopher L. Meacham, Esq., Meacham & Earley, P.C., for the protester.
Donald M. Conner for Conner Brothers Construction Company, Inc., an intervenor.
William A. Hough, Esq., and Gregory W. Vanagel, Esq., Department of the Army, for the agency.
Robert Arsenoff, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the acceptance of a modified bid on the basis that the modification rendered the intended price ambiguous is denied where the bid remains low under any interpretation of the modification.
2. Allegation that agency accepted a late bid modification is denied where it is based on speculation and is essentially contradicted by the record.

DECISION

The Lisle Company protests the award of a contract to Conner Brothers Construction Company, Inc., under invitation for bids (IFB) No. DACA21-97-B-0053, issued by the Department of the Army, Corps of Engineers, for the construction of a rail loading facility at Fort Benning in Georgia. Lisle maintains that the agency improperly accepted a modification to Conner's bid.

We deny the protest.

BACKGROUND

The IFB, issued on August 26, 1997, called for a base bid consisting of nine line items, Nos. 0001 through 0009, with additive work included in line item Nos. 0010 through 0013. The bid schedule required bidders to enter five totals as follows: base bid; base bid plus additive No. 1; base bid plus additives Nos. 1 and 2; base bid plus additives Nos. 1 through 3; and base bid plus additive items Nos. 1 through 4. The IFB provided that the low price would be calculated by determining which bid offered "the lowest aggregate amount for the . . . base bid . . . plus . . . (in the order stated in the list of priorities in the bid schedule) those additive . . . items that

provide the most features within the funds determined available" for the project. The funds available for award were \$8,403,813.

Eight bids were opened on September 25 at 2 p.m. The awardee and the protester filled out their bid schedules as follows:

	Conner	Lisle
Base bid	\$8,000,000	\$7,795,443
Base + Add. 1	8,175,000	7,790,999
Base + Adds. 1-2	8,426,000	8,302,651
Base + Adds. 1-3	8,497,000	8,372,778
Base + Adds. 1-4	9,171,809	8,965,692

According to the agency, but questioned by Lisle (as discussed in more detail below), Conner's bid envelope contained a letter on company stationery, addressed to the agency, dated September 25 and signed by John B. Conner, Vice President of the firm, which provided in pertinent part as follows:

RE: Bid Under Invitation
DACA21-97-B-0053
RAIL LOADING FACILITY
Fort Benning, Georgia
To Be Opened: September 25th, 1997 at 2:00 P.M.

Gentlemen:

Please **XXX** deduct the lump sum of \$ [157,000] **XX** from
[0001 JBC]
our Bid Item 0008 and modify totals accordingly.¹

The contracting officer states that, at bid opening, she deducted the amount of \$157,000 from Conner's base bid only and announced the totals as follows:

	Conner	Lisle
Base bid	\$7,843,000	\$7,795,443
Base + Add. 1	8,175,000	7,990,999
Base + Adds. 1-2	8,426,000	8,302,651
Base + Adds. 1-3	8,497,000	8,372,778
Base + Adds. 1-4	9,171,809	8,965,692

¹The "X's" in bold type represent handwritten strike marks through apparently pretyped words. The entries within brackets were handwritten.

Because Lisle's bid was apparently low within the funding limitation for the base bid plus additives Nos. 1 through 3, the protester was identified at bid opening as the prospective awardee subject to change upon further analysis.

The agency states that, on the following day, September 26, it realized that the \$157,000 amount should have been deducted from Conner's original bid entries for the base bid and various additive item combinations so that the appropriate comparative totals as modified by the September 25 letter were, in fact, as follows:

	Conner	Lisle
Base bid	\$7,843,000	\$7,795,443
Base bid + Add. 1	8,018,000	7,990,999
Base bid + Adds. 1-2	8,269,000	8,302,651
Base bid + Adds. 1-3	8,340,000	8,372,778
Base bid + Adds. 1-4	9,014,809	8,965,692

Based on this analysis, the agency awarded Conner the contract for the base items plus additives Nos. 1 through 3, because the modified total of \$8,340,000 provided the most features within the funding limitation and was below Lisle's bid for the same items. This protest followed.

PROTEST AND ANALYSIS

Lisle raises two issues in its protest: that Conner's bid is ambiguous as to price, and that the purported modification was not submitted prior to bid opening.

As to the first issue, Lisle alleges that the insertion of the figure "0001" accompanied by the initials "JCB" in the September 25 modification letter, without striking the typewritten figure "0008" and without initialling the phrase "Bid Item 0008," renders the purported modification invalid because it creates an ambiguity as to whether the awardee intended the downward modification of \$157,000 to apply to item No. 0001, item No. 0008, or both items. Lisle therefore argues that, since the bid price is not fixed, the bid should be rejected.

A bid which is ambiguous as to price need not be rejected if it is low under all possible interpretations; the actual price may be verified after bid opening. The Ryan Co., B-238932, June 13, 1990, 90-1 CPD ¶ 557 at 4. Here, if the modification is understood to apply to either item No. 0001 or item No. 0008, both of which are components of the base bid, and the downward adjustment of \$157,000 is carried through to the entry for the base bid plus Additive Nos. 1 through 3, its acceptance results in a low figure of \$8,340,000, versus Lisle's counterpart entry of \$8,372,778. If the modification is intended to apply to both items Nos. 0001 and 0008 and carried through to the entry for the base bid and Additives Nos. 1 through 3, it results in a downward modification of \$314,000, which is lower than Lisle's

counterpart figure by an even greater amount. Because Conner's bid is low under any possible scenario, the alleged ambiguity presented by the text of the modification letter does not require the rejection of the bid. Id.

As to the second issue, Lisle maintains that the modification letter was not received prior to bid opening and that the modification was not effectuated until the agency received confirming correspondence from Conner on September 26. This allegation is based on the accounts of two Lisle representatives who state that, when they examined Conner's bid on September 25 at the opening, they did not see the modification letter. The agency and the awardee maintain that the letter was included in the sealed envelope containing Conner's bid which was submitted to the agency prior to 2 p.m on September 25.

As part of the protest process, our Office conducted a telephonic hearing during which Conner's witness (who was in attendance at the bid opening) testified that he made the handwritten notations to the September 25 letter, sealed the annotated letter in the envelope containing the firm's bid and submitted the package to the contracting officer prior to 2 p.m. on September 25. The contracting officer testified that the letter was contained in the envelope she received prior to 2 p.m. and opened soon thereafter. Lisle's witnesses (who were also in attendance at the bid opening) testified that, when they examined Conner's bid, they did not see the September 25 letter.

All of these witnesses testified that, when the contracting officer read the bid prices at the opening, she stated that Conner's bid price for the base items was \$7,843,000. Lisle's witnesses conceded that they could not explain how this modified total could have been read at opening if the \$157,000 downward modification letter was not in the government's possession prior to opening. There was no testimony to contradict the contracting officer's testimony (and that of Conner's representative) to the effect that the only package delivered by Conner to the contracting officer on September 25 was the envelope containing the bid and the modification letter.

Lisle's allegation is essentially the speculation that, because its representatives did not see the modification letter when they examined Conner's bid, the modification had to have been submitted late. Speculation that agency officials improperly permitted a bidder to modify its bid after opening is insufficient to support sustaining a protest where the agency denies that a late modification was permitted and the record contains no evidence that a late modification was, in fact, permitted. J & J Maintenance, Inc., B-250110, Jan. 8, 1993, 93-1 CPD ¶ 25 at 4. Further, Lisle's theory is essentially contradicted by the fact that the contracting officer stated at opening that she had a bid modification and read an appropriately modified base bid total, which, in our view, clearly establishes that the agency did have the

September 25 letter in hand prior to the time set for bid opening. Accordingly, we have no basis for questioning the agency's acceptance of Conner's bid as modified.

The protest is denied.

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